

App. Ser. No.: 10/032,218
Atty. Doc. No.: BCS03851

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/032,218
Confirm. No.: 3464
Inventor: Carlton J. Sparrell
Filing Date: December 21, 2001
Title: Digital Video Recording and Reproduction System and Method
Suitable for Live-Pause Playback Utilizing Intelligent Buffer
Memory Allocation
Examiner: Dang, Hung Q.
Art Unit: 2621
Atty. Docket No.: BCS03851
Mail Stop Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL CONFERENCE BRIEF

Please review the Final Rejection mailed on November 15, 2006. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal and required fee. The review requested is attached hereto and is not more than five (5) pages.

The sole issue for consideration is the interpretation of “live-pause” as it is used in independent claims 1, 9 and 17.

In making the obviousness rejection of claims 1-22, the Examiner has misinterpreted the meaning of the term “live-pause.” This term is defined on page 2, line 9 – page 3, line 7 of the specification. In particular, live-pause operation requires continued recording of the program while the user pauses the display of the last frame played. If live-pause is invoked, the use may also rewind and fast-forward through the portion of the program already recorded. One feature of live-pause recording is the user has the opportunity to watch all of the content being received without missing any of it. Thus, the intrinsic record of this application provides a definition for the term “live-pause.” See Teleflex, Inc. v. Ficos N. Am. Corp., 299 F.3d 1313, 1324 (“[t]he words used in the claims are interpreted in light of the intrinsic evidence of record, including the written description, the drawings, and the prosecution history”).

Even assuming the present specification did not provide the proper definition for “live-pause,” this term has ordinary meaning in the art. Id. (“In the absence of an express intent to impart a novel meaning to claim terms, an inventor's claim terms take on their ordinary meaning.”) The Examiner is respectfully referred to paragraph [0003] of U.S. Patent Application Publication No. 2003/0063893 to Read. That explanation of “live-pause” is the same as that given in the present specification. Thus, the extrinsic evidence supports the proper claim construction being advocated by the Applicant.

The Examiner has ignored these tenets of claim construction and asserted that he must give the term “live-pause” its broadest reasonable interpretation. See Advisory

Action mailed on January 23, 2007. In doing so, however, the Examiner's claim construction is incorrect and therefore not "reasonable."

The Examiner asserts the broadest reasonable interpretation of the term "live-pause" is "paus[ing] or stop[ping] a recording or playback of a live program." See Advisory Action mailed on January 23, 2007. This is a standard interpretation of "pause" and not "live-pause."

If a user pauses the recording of a live program, the user will lose part of that content. As an example, if a user is recording a 30 minute program and pauses recording for 5 minutes somewhere in the middle, the user will end up with only 25 minutes of recorded content. In addition, the 25 minutes of recorded content will be discontinuous because of the missing 5 minutes. That is, there will be scenes missing that cause the playback of the recorded content to be confusing.

In contrast, "live-pause" recording does NOT pause or stop the recording. Instead, it either initiates the recording or continues it so the user can take a break from watching the streaming or broadcast live content and return to it say 5 minutes later. The user can then exit the "live-pause" mode and start watching the content off of the storage medium while the presently streamed or broadcasted live content is stored onto the storage medium. Thus, the storage medium is both reading out and recording content contemporaneously.

The other part of the Examiner's interpretation (e.g., pausing a live program) is simply not supported. If a source is streaming or broadcasting live content to a user's home, how can that user pause it? If one user were to pause a live program, this would interfere with another user enjoying that content at that time. That is, one user would

pause the generation of the live content so that all other consumers of that content would have to wait for that one user to “un-pause” it. This interpretation simply does not make sense and is not supported in any of the references cited by the Examiner.

Taken together, the Examiner’s interpretation of “live-pause” is, at best, synonymous with “pause,” and at worst unworkable. Ignoring the unworkable portion of the definition, the Examiner has expressly read the modifier “live” out of the claim limitation so that his definition of “live-pause” is “pause.” This is not a reasonable interpretation of the claim limitation. See Lockheed Martin Corp. v. Space Systems/Loral, Inc., 249 F.3d 1314, 1319 (“the district court erred by improperly broadening the scope of the claimed function by “reading out” the limitations contained in the claim language”).

The Examiner’s incorrect interpretation of “live-pause” leads the Examiner to make an improper rejection using the Young reference. As stated by the Examiner, Young can only rewind or fast-forward through content “during stop recording.” See Final Rejection mailed November 15, 2006, page 2, last paragraph. Since stop (or pause) recording is not consistent with “live-pause” operations, the Young reference cannot be used in rejecting the present claims.

Dependent claims 2-8, 10-16 and 18-22 are allowable due to their dependence on an allowable base claim.

CONCLUSION

No fees are due for this amendment. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant requests entry of this amendment, reconsideration of the pending claims and the issuance of a Notice of Allowance. Should the Examiner have any questions, he is invited to contact Applicant's representative below.

Respectfully submitted,

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____February 15, 2007____
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